



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/172373

PRELIMINARY RECITALS

Pursuant to a petition filed February 29, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a telephone hearing was held on April 06, 2016.

The issue for determination is The issue for determination is whether the respondent correctly instituted a tax intercept.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED], [REDACTED].
2. On January 20, 2014, the agency sent the Petitioner Notifications of FoodShare Overissuance, referencing Claim Number nos: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and

██████████ indicating that she was liable for overissued FoodShare benefits in the total amount of \$5,200.00. (Exhibits 2-4 through 2-8)

3. The agency sent Petitioner a repayment agreement on February 4, 2014. (Exhibit 2-10)
4. The agency sent the Petitioner dunning notices (reminders about the debt) on March 4, 2014, April 2, 2014, and May 2, 2014. (Exhibits 2-11 through 2-13)
5. On June 13, 2014, the agency sent the Petitioner a notice of state tax intercept, advising her that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt." (Exhibit 2-12)
6. Petitioner's state tax refunds/credits were intercepted on November 27, 2015, and again on March 4, 2016. The remaining overpayment balance is 3,459.00. (Exhibit 2)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 29, 2016. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

The respondent alleges that FS overpayment arose from petitioner's failure to report that she was not residing in Wisconsin as of January, 2011. The respondent's investigation found that at that time, petitioner was a fulltime college student enrolled at ██████████ in ██████████, where she was a member of the school's basketball team. The Petitioner filed an appeal because she does not think that she should be held liable for the overpayment underlying the tax intercept, because she was a resident of Wisconsin until 2013.

With regard to the underlying overpayment, the Petitioner's appeal is untimely. The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

....

7 CFR 273.15(g)

Petitioner's February 29, 2016, appeal was filed well beyond 90-days from the date of the January 20, 2014, overpayment notices. The respondent testified that all mail was sent to petitioner's last reported address, and that no mail was ever returned as undeliverable. Petitioner was unable to establish any good cause for the late filing. As such, there is no jurisdiction to consider the merits of her appeal of the underlying overpayment.

With regard to the State Tax Intercept, Petitioner's appeal is also untimely. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the tax intercept notice was June 13, 2014. As such, Petitioner needed to file her appeal by July 13, 2014. Petitioner did not file her appeal until February 29, 2016. As such, her appeal is untimely and there is no jurisdiction to hear the merits of her appeal of the state tax intercept.

CONCLUSIONS OF LAW

1. Petitioner's appeal of the underlying FoodShare overpayment is untimely.
2. Petitioner's appeal of the state tax intercept is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed in its entirety.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in Dane County, Wisconsin. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of April, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 27, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit